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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

# Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report submitted by the Special Rapporteur on toxic waste,
Mrs. Fatma-Zohra Ouhachi-Vesely

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## Introduction

1. In 1995, at its fifty-first session, the Commission on Human Rights adopted its first resolution specifically concerning the "adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights" (resolution 1995/81). In that resolution, the Commission decided to appoint a Special Rapporteur for a period of three years with a mandate to investigate the question of toxic waste and to draw up a report each year on the alarming practice of dumping toxic and dangerous waste. Pursuant to that resolution, Mrs. Fatma-Zohra Ksentini (at present Mrs. Ouhachi-Vesely) (Algeria) was appointed Special Rapporteur.

2. In her preliminary report (E/CN.4/1996/17), the Special Rapporteur gave an overview of questions related to the illicit dumping of toxic products and analysed the legal framework and international standards relevant to the exercise of her mandate.

3. Each year subsequently the Commission approved a resolution on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1996/14, 1997/9 and 1998/12). Pursuant to those resolutions, the Special Rapporteur has each year submitted a progress report giving the results of the "global, multidisciplinary and comprehensive study of existing problems of and solutions to illicit traffic in, transfer and dumping of toxic and dangerous products and wastes" requested by the Commission, and summarizing the general comments received from Governments and from intergovernmental and non-governmental organizations, as well as the real cases and incidents involving the movement and dumping of toxic products (E/CN.4/1997/19, E/CN.4/1998/10 and Add.1 and E/CN.4/1999/46).

4. In order to become acquainted with practical experience and problems arising in the field, the Special Rapporteur also carried out missions to Africa and South America: in 1997, she visited South Africa, Kenya and Ethiopia (see E/CN.4/1998/10/Add.2) and in 1998 Paraguay, Brazil, Costa Rica and Mexico (see E/CN.4/1999/46/Add.1).

5. In 1998, at its fifty-fourth session, the Commission on Human Rights, by its resolution 1998/12, decided to renew the mandate of the Special Rapporteur for a period of three years. On 26 April 1999, the Commission adopted resolution 1999/23, under the terms of which Mrs. Fatma-Zohra Ouhachi-Vesely submits this progress report.

6. In its general layout, the report is similar to previous progress reports. The first four chapters cover the activities of the Special Rapporteur in 1999 (chapter I), the general information submitted by Governments and by intergovernmental and non-governmental organizations (chapter II), the review of cases of illicit movement and dumping of toxic waste and products submitted to the Special Rapporteur (chapter III) and the follow-up to field missions undertaken by the Special Rapporteur (chapter IV). In the last chapter, devoted to conclusions and recommendations (chapter V), the Special Rapporteur, after confirming the validity of the recommendations contained in her earlier reports, draws conclusions concerning the most alarming cases to emerge in recent years.

# I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

## A. Missions

7. Following her missions to Africa (1997) and Latin America (1998), the Special Rapporteur decided to visit Germany and the Netherlands in 1999, the first group in the European region to respond favourably to her request for a visit. The report on her mission to those two countries appears in the addendum to this report (E/CN.4/2000/50/Add.1). In the course of the year 2000, the Special Rapporteur intends to visit the Asia-Pacific region and possibly North America. She has already established contacts with Governments, which are considering her requests for a visit. Some of them have already supplied documentation, which can undoubtedly help with preparations for the missions, but can in no way replace the latter.

## B. Workshop on gender integration into the human rights system

8. From 26 to 28 May 1999, in Geneva, the Special Rapporteur took part in a workshop on gender integration into the human rights system jointly convened by the Office of the United Nations High Commissioner for Human Rights, the Division for the Advancement of Women and the United Nations Development Fund for Women. She explained on that occasion how she tried to introduce a gender perspective in her reports, in the belief that women as a group are particularly exposed to the adverse effects of the use of toxic products and dangerous waste on the right to life, the right to health, the right to an adequate living standard, the right to development, the right to work, the right to participation, the right to freedom of expression and assembly, the right to information and other fundamental rights.

9. She recalled that chapter IV of her final report on human rights and the environment, submitted in 1994 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/9), dealt with the degradation of the environment and its impact on vulnerable groups, with a section devoted particularly to women. The report drew attention to the considerable attention devoted by Agenda 21 to women's participation in sustainable and equitable development and to the recognition in the Declaration of Rio that "women have a vital role to play in environmental management and development. Their full participation is therefore essential to achieve sustainable development". The Special Rapporteur felt that it would be useful to share with other participants her experience with introducing a gender perspective in her analysis of matters concerning toxic waste. She mentioned the problems which arose in establishing a link between the harm to women's health caused by the use of dangerous chemical products such as pesticides and claims for compensation from companies which marketed such products.

10. In her 1994 report, the Special Rapporteur had noted a disturbing discrepancy between recognition of the decisive role played by women in promoting sustainable development and the place they occupied in practice. Women's organizations throughout the world have clearly played a leading role in promoting environmental awareness, while women play a critical role in the management, use and protection of natural resources and in environmental education.

11. Even if, because of their traditional knowledge, skills and experience, women are no longer regarded as the originators or the victims of environmental degradation, but as actors who possess essential assets for its preservation, it is still true that in practice they are the first to

suffer from the risks and harmful effects of such degradation and among the last to enjoy access to available remedies (penalized by thankless tasks, unhealthy jobs, low participation at all levels, including in trade unions, politics, public affairs and decision-making; low educational standards leading to ignorance of rights or inability to take advantage of remedies; discrimination in law or in practice, etc.).

12. While the Special Rapporteur has not yet reached any final general conclusions regarding her mandate, she is already sure that women and children are not spared the adverse effects of the illicit movement of toxic products and dangerous waste, even though they remain to a certain extent less exposed than men. It should be pointed out that it is often impossible to obtain details of the age and sex of victims. Moreover, owing to the very fact that women in a particular field that employs more male labour appear less exposed, they do run another risk, which is that of being deliberately ignored whenever they are directly or indirectly affected, in their physical and mental health or in that of their children and families, in their private lives and in their living conditions.

13. A revealing case is that of women workers on the banana plantations of the American firms United Fruit Company and Standard Fruit Company in Costa Rica, who were affected by the use of dibromochloropropane (DBCP). While the complaints of workers sterilized due to the use of this highly toxic nematicide were considered valid, the women and children suffering from various disorders because they were exposed to the product when they brought meals to the workers have still been excluded from compensation. The firms concerned maintain that no causal link has yet been established in their case. In her previous report (E/CN.4/1999/46/Add.1, paras. 56-62), the Special Rapporteur had informed the Commission on Human Rights of the request for technical assistance by the Defensoria de los Habitantes de Costa Rica (Ombudsman), in the form of expertise in particular, in order to support the claims of victims excluded from the compensation process. Moreover, the psychological impact and moral effects on families, including women, of the irremediable sterilization of thousands of workers appear to have been withheld from public view.

14. At the workshop, the Special Rapporteur also pointed out that it was important for the successful implementation of special rapporteurs' mandates that cooperation links should be strengthened between the different United Nations bodies dealing with women's problems. That would make it easier for special rapporteurs, when planning field visits, to obtain accurate data on the status of women in the country they would be visiting. They could also, if necessary, have access to the statistical data and studies produced by the Division for the Advancement of Women and UNIFEM (United Nations Development Fund for Women).

15. In addition, special rapporteurs are often asked to help with the provision of technical assistance for the implementation of specific projects. It would be useful to see to what extent projects such as those concerning women's training or the launch of private projects encouraging women's participation could be undertaken on a joint basis by the Office of the High Commissioner for Human Rights, the Division for the Advancement of Women, UNIFEM and other bodies, with the assistance of special rapporteurs.

### C. Sixth meeting of special rapporteurs

16. From 31 May to 3 June 1999, the Special Rapporteur took part in the sixth meeting of special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights. The Special Rapporteur hopes that the efforts of the Office of the High Commissioner for Human Rights to strengthen the special procedures and allocate human and material resources to them will be successful. She particularly hopes that the data bank on special procedures will become effective in the near future in order to facilitate the processing of allegations received, the follow-up of recommendations by special rapporteurs, and the exchange of information between country rapporteurs and thematic rapporteurs, as well as with treaty bodies.

### D. Difficulties encountered in fulfilment of the mandate

17. Owing to a shortage of financial resources at the end of 1999, the Office of the High Commissioner was unable to finance the Special Rapporteur's visit to Geneva, where she had intended to finalize her report. Submission of the report was delayed as a result. The Commission on Human Rights should secure the allocation of sufficient annual resources to ensure completion of the Special Rapporteur's activities.

## II. SUMMARY OF GENERAL COMMENTS SUBMITTED TO THE SPECIAL RAPPORTEUR

### A. Replies received from Governments

18. The Special Rapporteur received information from the following Governments: Australia, Brazil, Costa Rica, Georgia, Indonesia, Japan, Oman, Paraguay, Portugal, South Africa and Thailand. Some of this information is analysed in the sections in chapters below. As the communications from South Africa, Brazil, Costa Rica and Paraguay related to the Special Rapporteur's missions to those countries, they appear in chapter IV dealing with the follow-up to field missions.

#### 1. Australia

19. The Government of Australia stated that the import and export of hazardous wastes was regulated in Australia by the Hazardous Wastes (Regulation of Exports and Imports) Act, which had been amended in 1996 to ensure that it was fully consistent with the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Hazardous Waste Section of the Department named "Environment Australia" is the competent authority to monitor the implementation of the legislation. Under this Act, "exports for final disposal are only permitted under exceptional circumstances, such as the existence of a significant risk of injury or damage to human beings or the environment or if the waste is needed for research or testing. Import permits may be granted for wastes which are destined for final disposal in accordance with State and Territory requirement, but such permits have been issued only for Australian-owned waste or household waste from Antarctic bases".

20. Regarding the prohibition of export of hazardous wastes from countries listed in Annex VII (member countries of the OECD, the European Community and Liechtenstein) to all

other countries, the Government of Australia has expressed a clear view that countries should be able to move both on and off Annex VII on the basis of their ability to manage waste in an environmentally sound manner. The Government also considers it important that article 11 of the Basel Convention (which enables Parties to enter into bilateral, multilateral or regional agreements or arrangements with other Parties or with non-Parties) should continue to be available between Annex VII and non-Annex VII countries irrespective of whether the ban amendment enters into force or not.

21. According to the Australian authorities, no hazardous wastes have been recently exported to developing countries. The Study Related to Annex VII of the Basel Convention commissioned by the secretariat of this treaty confirms this statement. Export of lead waste and scrap from used batteries to Asian countries has been stopped since 1995. The last exports of copper ashes and residues registered are dated 1994 and 1995; they were sent to South Africa for recovery.

## 2. Georgia

22. The Government of Georgia indicated that article 2 of the Law on Transit and Import of Hazardous Waste on the Territory of Georgia restricts the transit and import of any kind of waste on the entire territory of Georgia, including territorial waters, air space, continental shelves and economically mostly important zones. No case of violation of this legal provision has been registered.

## 3. Japan

23. The Government of Japan informed the Special Rapporteur that Japan had concluded the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (hereafter called the Basel Convention) in September 1993 and also accepted the OECD Council Decision on the Control of Transboundary Movements of Wastes to be Collected in December 1993. Accordingly, when the Basel Convention took effect for Japan on 16 December 1993, the Law for Control of Export, Import and Others of Specified Hazardous Wastes and Other Wastes (hereafter called the Domestic Law for the Basel Convention) was implemented and the Waste Management Law was amended at the same time.

24. Control of export and import of (hazardous) wastes is provided for by the Domestic Law for the Basel Convention and the Waste Management Law. The Domestic Law for the Basel Convention provides that permission according to the Foreign Exchange and Foreign Trade Control Law is required prior to export and import of waste which is hazardous in light of the Basel Convention, while the Wastes Management Law provides for control on export of waste material, which are of value regardless of whether they are hazardous or not, based on the principle of management within Japan.

***Control by the Waste Management Law***

25. The Waste Management Law makes it a principle that (non-valuable) waste materials generated within Japan are to be appropriately managed within Japan (art. 2.2). It also requires

Minister of Health and Welfare's acknowledgement prior to export of waste materials (arts. 9.6 and 15.4.5). In conformity with the principle of management within Japan, the Minister of Health and Welfare has not acknowledged any export hitherto.

***Control under the Domestic Law for the Basel Convention***

26. The Domestic Law for the Basel Convention defines the materials recognized as "specified hazardous wastes" to be controlled and requires the following process in export and import of the specified hazardous wastes:

(i) Application by the person who wishes to export a specified hazardous waste for permission from the Minister for International Trade and Industry (MITI);

(ii) Transfer of the application document to the Director General of the Environment Agency;

(iii) Sending of prior notification to the countries of import and transit from the Environment Agency;

(iv) Examination by the Environment Agency whether sufficient measures will be taken for preventing environmental pollution upon receipt of the agreement from the countries of import and transit (this examination is unnecessary for export to the OECD countries with the objective of recycling) and notification to the MITI of the result of this examination;

(v) Permission for export by the MITI;

(vi) Issue of the export movement document by the MITI to the person who has export permission (issue of the document is necessary for each export when the permitted waste is exported on several separate occasions).

***Waste management in foreign countries***

27. As stated above, wastes generated within Japan are, in principle, to be managed in Japan and there has been no example of waste management in foreign countries.

***Situation with regard to the export and import of specified hazardous wastes***

28. The countries to which Japan has exported hazardous wastes are Germany, Belgium and the Republic of Korea, all of which are OECD countries. All the exports are for recycling and recovery of such metals as copper, lead and tin, and there is no export with the objective of final disposal.

***Environmental crime in Japan***

29. There were 2,371 cases of waste management crime in 1998, 71.8 per cent of which involved illegal waste dumping. Cases concerning industrial waste amounted to 1,120 cases -

208 cases more than the previous year's record. The National Police Agency of Japan established the Consultative Meeting for the Prevention of Illegal Industrial Waste Management with relevant institutions and bodies and keeps in close contact with them in order to prevent inappropriate management and illegal dumping of industrial wastes and to tackle them promptly and appropriately.

30. There were 404 cases of illegal ocean dumping of wastes found by the Maritime Safety Agency in 1998. They were referred to as cases against the Waste Management Law. The Japanese Maritime Safety Agency tackles these cases appropriately in liaison with patrol boats and aircraft and it keeps close connection with concerned institutions and bodies in order to strengthen the prevention of illegal waste dumping.

***Illegal transboundary movement of hazardous wastes***

31. There have been no reports of cases of the illegal transboundary movement of hazardous wastes in Japan since the enforcement of the Domestic Law for the Basel Convention.

4. Oman

32. The Government of Oman provided the Special Rapporteur with a copy of Ministerial Decision No. 18/93, issued by the Ministry of Regional Municipalities and Environment on 2 February 1993, concerning the Regulations for the Management of Hazardous Waste. Article 15 of this text provides that no hazardous wastes whatsoever shall be imported into or exported from the Sultanate [of Oman] without permit from the Minister. This permit shall be issued after seeking the approval of the concerned government agencies according to the Law on Conservation of the Environment and Protection from Pollution.

5. Portugal

33. The Portuguese Government informed the Special Rapporteur that Decree-Law No. 239/97 had been adopted to regulate the management of dangerous wastes in conformity with regional instruments (EEC Regulation No. 259/93 on the supervision and control of shipments of wastes within, into and out of the European Community) and with international instruments (Basel Convention and Lomé Convention). Under that Decree-Law, the Waste Institute is responsible for supervising the cross-border movement of waste. In conformity with Portuguese legislation, no illicit movement of waste occurred to developing countries.

6. Thailand

34. The Government of Thailand informed the Special Rapporteur that in the past Thailand may have experienced an incident of the disposal of chemical residues left by the fire at Klong Toey Port in Bangkok in 1991. However, according to the Ministry of Science, Technology and Environment, since Thailand became a member of the Basel Convention, on 22 February 1992, it has undertaken the strictest measures to control the importation and exportation of toxic and dangerous products and wastes. The Government of Thailand stated that at present no adverse effects of illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights were to be found on its territory.

B. Information submitted by intergovernmental organizations

1. United Nations Environment Programme/Secretariat of the Basel Convention

35. UNEP and the Secretariat of the Basel Convention have informed the Special Rapporteur of their recent activities relating to the regulation of trade in persistent organic pollutants and the control of the transboundary movement of dangerous waste. On the basis of the documents transmitted to her, the Special Rapporteur has made the analysis which is contained in the following paragraphs.

(a) The prior informed consent (PIC) procedure in the case of hazardous chemicals in international trade

36. Every year, pesticides and other toxic chemicals cause serious poisoning and kill thousands of people. Many of these substances, moreover, have devastating effects on the environment, polluting water resources and causing poisoning in animals, plants and even humans. Stocks of disused pesticides and toxic chemicals accumulate in almost all developing countries. They are mostly persistent organic pollutants, extremely toxic chemicals whose lifespan in nature is very long, which accumulate in the organism and which are moreover extremely mobile; this means that they are sometimes found thousands of miles from the point at which they were released.

37. The growth of world trade in chemicals during the 1960s and 1970s aroused increasing concern about the risks posed by the use of hazardous chemical substances. This concern led, in particular, to the preparation, in 1985, by the Food and Agriculture Organization of the United Nations (FAO), of the International Code of Conduct on the Distribution and Use of Pesticides and, in 1987, by the United Nations Environment Programme, of the London Guidelines for the Exchange of Information on Chemicals in International Trade.

38. In 1989, the so-called prior informed consent (PIC) procedure was instituted, with the aim of regulating the importation of hazardous chemical substances which are banned or severely restricted. On 10 September 1998, the Conference of Plenipotentiaries adopted the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (see paras. 44-48 below).

(i) The purposes of the PIC procedure

39. The PIC procedure is operated jointly by FAO and UNEP, in the context of the Joint FAO/UNEP Programme on Implementation of the PIC procedure; the Plant Production and Protection Division of FAO is the lead agency for pesticides, and UNEP, through the International Register of Potentially Toxic Chemicals (IRPTC), is lead agency for other chemicals.

40. The PIC procedure gives importing countries clearer information on the characteristics of any potentially hazardous chemicals that might be shipped to them, and enables them to decide for themselves on future imports of such chemicals and to inform other countries of that

decision. The aim is to encourage exporting countries and importing countries to jointly assume responsibility for protecting human health and the environment against the harmful effects of certain hazardous chemical substances in international trade.

41. In addition, the PIC procedure provides basic information and indicates how to obtain other useful information for the purpose of taking decisions, in the field of health and the environment, concerning the future use of the identified chemicals. In this respect, until the adoption of the Rotterdam Convention, what was involved was essentially an information exchange system.

(ii) Operation of the existing PIC procedure

42. The existing optional procedure has been administered by UNEP and FAO since 1989 on the basis of the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the Code of Conduct on the Distribution and Use of Pesticides. In order to perfect the new PIC procedure instituted by the Convention, full account has been taken of the experience gained with the operation of the original procedure.

43. The Rotterdam Convention will enter into force when it has been ratified by 50 countries. Governments have agreed to continue to operate the optional PIC procedure following the new provisions established by the Convention, until such time as the Convention has officially entered into force; this constitutes an innovation in the area of multilateral environmental agreements. This arrangement, which betokens the importance which Governments attach to the Convention, will avoid a hiatus in the operation of the procedure.

(iii) The Rotterdam Convention on the Prior Informed Consent Procedure

44. The Rotterdam Convention on the Prior Informed Consent Procedure applicable in the case of certain hazardous chemicals and pesticides in international trade was adopted by the Conference of Plenipotentiaries on 10 September 1998. It was opened for signature on 11 September 1998 and was signed by 62 Governments during the Conference; the final act was signed by 80 Governments. According to UNEP and FAO, the Convention represents an important step forward in the protection of the environment and citizens of all countries, in particular the developing countries, against the risks inherent in trade in pesticides and chemicals which are extremely hazardous for life and the environment. The Convention sets standards which will enable trade in hazardous chemicals to be controlled. Importing countries have the right to refuse to import products which they would be unable to control with complete safety. Obligations relating to labelling and communication of information on risks to health and the environment will furthermore enable imported chemicals to be used in greater safety.

45. The Convention covers pesticides and industrial chemicals which are banned or severely restricted on the territory of the parties for reasons relating to the protection of health or the environment, and for which the parties have issued a notification for the purposes of operation of the PIC procedure. Severely hazardous pesticide formulations which pose a danger to developing country parties or transition country parties owing to the conditions in which they are used in these countries may also be the subject of a request for coverage by the PIC procedure. It is the Conference of the Parties which decides which chemicals will be subject to the

procedure. Initially, the Convention will apply to a minimum of 27 chemicals (pesticides and industrial chemicals), which are those currently covered by the optional PIC procedure. Once the Convention enters into force, hundreds of other products will undoubtedly be added to the list over the years. Certain particular groups of chemicals, such as narcotic drugs and psychotrophic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals, food and food additives, are excluded from the scope of the Convention. Also excluded are chemicals imported in quantities not likely to affect human health or the environment, provided they are imported for the purpose of research or analysis or by an individual for his or her personal use in quantities reasonable for such use.

46. The Convention also provides for the exchange of information between the parties on exported and imported potentially hazardous chemicals, and also a national decision-making procedure concerning imports and compliance by exporters with the decisions taken. The provisions relating to this exchange of information are the following:

(a) When a chemical is banned or severely restricted on their territory, the parties must notify the other parties accordingly;

(b) Parties which are developing countries or countries in transition have the possibility of notifying the other parties that a particular severely hazardous pesticide formulation poses problems because of the conditions in which it is used on their territory;

(c) Any party intending to export a chemical whose use is banned or severely restricted on its territory must notify the importing party of the intended export shipment, prior to the first delivery, and then every year thereafter;

(d) In the case of the export of chemicals that are to be used for occupational purposes, each exporting party must require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to the importer;

(e) A label comprising all necessary information concerning risks and hazards to human health or the environment must be affixed, at the time of export, to the packaging of chemicals covered by the PIC procedure and of chemicals which are banned or severely restricted in the territory of the exporting party.

47. The decisions taken by the importing party must not adversely affect free competition; in other words, when a party decides not to consent to the import of a particular chemical, it must also ban its production on its territory for purposes of domestic consumption, and ban importation from non-parties.

48. The Convention also provides for technical assistance. In order that the Convention may be effectively implemented, the parties, taking into account in particular the needs of developing countries and countries in transition, will cooperate in promoting technical assistance for the development of the infrastructure and capacity necessary to manage chemicals. Parties with

more advanced programmes for regulating chemicals should provide technical assistance, including training, to other parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

(b) The Fifth Conference of States Parties to the Basel Convention

49. The Fifth Meeting of the Conference of the Parties to the Basel Convention was held in Basel (Switzerland) from 6 to 10 December 1999. This Conference, which coincided with the celebration of the tenth anniversary of the Convention, included as an important item on its agenda the adoption of the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal. The Protocol was adopted by the States parties on 10 November. A special fund was also established for damage not covered by the provisions of this treaty.

50. The purpose of the Protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes, and their disposal, including illegal traffic in those wastes (art. 1). However, it shall not apply to damage that has arisen from a transboundary movement of hazardous wastes and other wastes that has commenced before the entry into force of the Protocol for the contracting Party concerned (art. 3, para. 3a).

2. United Nations Interregional Crime and Justice Research Institute

51. The United Nations Interregional Crime and Justice Research Institute (UNICRI) informed the Special Rapporteur that it has launched a research project on organized and transnational crime, as well as the involvement of organized crime in crimes against the environment. This project will cover crimes relating to illegal trafficking in toxic waste, nuclear waste and material, illegal production and trafficking of ozone depleting substances (ODS), and lastly, the illegal trade in CITES-listed endangered species and products thereof. The project uses a broad definition of "criminal organizations" as two or more individuals working together in a premediated manner to achieve illicit financial gains.

52. Several entities within the United Nations, intergovernmental organizations, enforcement agencies and non-governmental organizations have expressed their deep concern over the emerging data suggesting that criminal organizations are increasingly committing crimes against the environment. The trend towards banning particular types of trade increases the need to ensure credible enforcement at both international and national levels. At the same time, prohibition historically has provided criminal organizations with new markets. A discrepancy between global intentions stated in international conventions and credible enforcement is therefore preparing the ground for illicit profits and black markets.

C. Information submitted by human rights organizations

53. The Working Group on Arbitrary Detention has informed the Special Rapporteur of the case of Mr. Grigorii Pasko, a 38-year-old commander in the Russian navy, who has been imprisoned since November 1997 by the Russian military authorities in the city of Vladivostok, having been charged with spying and high treason for disclosing State secrets. Mr. Pasko, who

is also a correspondent for the Russian Pacific fleet newspaper (Boyevaya Vakhita) in Vladivostok, has for several years been writing about the continuing breakage for recycling of old nuclear submarines, and the failure of the Russian authorities to process radioactive waste material resulting from the breakage of these submarines. Despite resistance, all articles published on these issues were approved by the editor-in-chief of the newspaper, as required. In addition, Mr. Pasko has worked for Japanese media, including the newspaper Asahi and the NHK television station. Allegedly the radioactive waste was dumped in the Pacific Ocean by the Russian navy; in 1993, he filmed a Russian navy tanker dumping radioactive waste in the Sea of Japan. This film, *Extra-Dangerous Zone*, was later shown by the Japanese television station NHK and by a television station in Prmorsky Krai, in eastern Russia.

54. After considering this case, the Working Group rendered the following opinion on 20 May 1999:

> "The deprivation of liberty of Grigorii Pasko was arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14, and 19 of the International Covenant on Civil and Political Rights ..."

Consequent upon the opinion rendered, the Working Group requested the Government to take the necessary measures to remedy the situation, ensuring that the articles of the Penal Code relating to national security were applied with due regard for the guarantees of freedom of expression laid down by international standards and by the Russian Constitution and laws.

55. On 20 July 1999, Grigorii Pasko was released by the Russian Pacific fleet military court in Vladivostok after it found that the prosecution lacked evidence to support the charges against him of espionage and revealing State secrets. The court also noted irregularities committed during the investigation and gathering of evidence. Yet, instead of acquitting him, the court found Mr. Pasko guilty of "abuse of office" under article 285, part 1, of the Russian Penal Code and sentenced him to the maximum term of three years' imprisonment. Noting that this "abuse of office" had been facilitated by the negligence of the Pacific fleet officials, the court then immediately relieved Mr. Pasko of the obligation to serve the sentence, under a provision of a recently-adopted amnesty law for prisoners and detainees.

### D. Information submitted by non-governmental organizations

56. The Special Rapporteur received information from Greenpeace International and the World Wide Fund for Nature (WWF) on the adverse effects of persistent organic pollutants (POPs) on fauna and flora. The video cassette submitted by Greenpeace shows how the health of indigenous populations in several countries is affected by the presence of such pollutants in animals, fish and plants, on which those peoples' diet is based. Both unborn children and women's milk are affected and the reproductive capacities of men are reduced owing to the presence of dangerous chemical products in their food.

57. The Special Rapporteur was invited to a conference on POPs, organized in September 1999 in Geneva by the Commonwealth Environmental Health Project and the International Joint Commission. The conference was intended to be educational in nature and to discuss the emerging scientific evidence of the impact of POPs on human health, with reference

also to wildlife and laboratory research. Although the Special Rapporteur did not attend the conference, she took note of information extracted from recent studies demonstrating the adverse effects of persistent pollutants on health.

58. Because these POP chemicals persist, bioaccumulate, and are easily transportable (semi-volatile) they are a global concern. All POPs possess a demonstrated capacity to affect human health, and the evidence with respect to the number of health outcomes continues to grow. The conference placed a special emphasis on the endocrine-disrupting impacts of POPs and on the broader emerging concept of POPs as "signal disrupters" that affect systems other than the endocrine system. Endocrine or signal disrupters can trigger a cascade of events in the developing foetus or the young child that can affect its neurological and immune systems. This damage may not appear for decades. The United Nations has responded by convening negotiations to produce a global, legally binding treaty banning or severely restricting these chemicals.

59. The Centre Europe-Tiers Monde (CETIM) sent the Special Rapporteur some documentation on the role of transnationals, globalization, trade liberalization and their effects on human rights. The Special Rapporteur's attention was drawn to a report by the Multinational Resource Centre (an American non-governmental organization), according to which the World Bank and the International Finance Corporation were encouraging the incineration of medical waste through more than 30 projects in some 20 countries.

60. This method of disposing of waste has been increasingly relinquished by industrialized countries. Medical waste incinerators give off not only dioxine, one of the most highly toxic cancerous pollutants, but also mercury, which is harmful to health because it affects the nervous system, the brain, the kidneys and the lungs.

## III. REVIEW OF CASES AND INCIDENTS SUBMITTED TO THE SPECIAL RAPPORTEUR

### A. Cambodia/Taiwan (Province of China)

#### 1. The facts

61. According to information received, on 21 December 1998, 1,000 people protested against the dumping of 3,000 tonnes of toxic waste in Sihanoukville. Allegedly, the industrial waste, which contains hazardous materials such as lead, zinc and mercury, was exported by Formosa Plastics, a Taiwanese petrochemical firm. The death of at least two local residents and five cases of dizziness appeared to be connected to their involvement in movement of the waste. Nearly 50,000 residents had fled their homes in fear of the effects of the waste on their health and 3 people were killed and 14 injured in car crashes while fleeing. Moreover, two persons, Kim Sen and Meas Minear, were allegedly arrested for protesting against the dumping of toxic waste.

#### 2. Reply by the Cambodian Government

62. On 30 November 1998, approximately 3,000 tonnes of wastes made up of old products of battery production were dumped at a site approximately 5 km from Sihanoukville. Owing to the

reaction to the illegal hazardous waste disposal on the part of the Government and the people who live in Sihanoukville, an agreement between Formosa Plastics Corporation and the Commission for Negotiation of Cambodia was signed to deal with the disposal of this waste. This agreement focused mainly on waste repacking, site clean-up and transportation of the waste outside Cambodia. Based on this agreement, repacking started on 9 March and finished on 31 March 1999. The total weight was 4,488,014 tonnes (including topsoil). The repacked waste was transported out of Cambodia on 2 April 1999.

63. In the case of two local residents' deaths and five cases of dizziness (as mentioned in the communication from the Special Rapporteur), the Government found no evidence proving the allegations. It is a fact, however, that nearly 50,000 residents had fled their homes.

64. Results of analyses showed that the hazardous waste did not damage the environment. The Ministry of Environment will continue to monitor the dumping site through analysis of soil, groundwater and surface water samples from the area.

***The mission report: Investigation into suspected mercury contamination at Sihanoukville***

65. The mission report was concluded in January 1999. The investigation was carried out by the National Institute for Minamata Disease of Japan at the request of the World Health Organization Regional Office for the Western Pacific. The main purpose of the investigation was to make preliminary recommendations for avoiding possible risks to the environment, the population in Sihanoukville and workers at the site; to carry out analyses of the waste samples for contamination with mercury and some other metals; to carry out analyses of the water samples for mercury contamination; and to carry out a health assessment of the port workers and soldiers (who cleaned the site) to ascertain whether they were suffering from mercury poisoning.

66. The report mentioned that 200 workers were involved in the transportation and unloading of the cargo and, "according to the Director of Health in Sihanoukville 10 patients were admitted to the provincial hospital with symptoms of poisoning and one has died. The main symptoms were vomiting, diarrhoea and dyspnoea. The patients were all among the workers who transported the waste or local people who took part in the looting of the plastic bags [containing the waste]".

67. However, based on interviews of port and site workers (who complained of health problems), and from analyses of blood, urine and hair samples, the investigators were not able to determine the causes of the health condition of the workers. They stated that the patients' symptoms (dizziness, visual trouble, headache and weakness) were "caused by the severe physical work in the dusty and hot environment [of the port and the dumping site]".

***Agreement between Formosa Plastics Corporation and the Commission for Negotiation of Cambodia***

68. This agreement provides, inter alia, that "[Formosa Plastics Corporation] agrees to be responsible for any Cambodian resident who made a claim to the [Commission for Negotiation of Cambodia] claiming that he or she suffered poisoning from hazardous substances coming from the wastes after a joint diagnosis for such Cambodian resident has been conducted by a

physician appointed by [Formosa Plastics Corporation] together with a physician appointed by [Commission for Negotiation of Cambodia] confirming that such Cambodian resident has indeed suffered poisoning from hazardous substances coming from the wastes" (art. 10).

### 3. Absence of reply from the Government of Taiwan (province of China)

69. No reply received.

### 4. Comment by the Special Rapporteur

70. The Special Rapporteur would like to suggest that the Government continue to monitor the health condition of the port and site workers and the residents, so as to detect any illness that may appear in the future and might be linked to poisoning by a hazardous substance coming from the wastes. The Special Rapporteur would wish to be informed of any legal action taken against the company responsible for the dumping of this waste and of the settlement of any claims on the basis of the agreement of 25 February 1999.

71. The Special Rapporteur is pleased to note that the two human rights defenders arrested in connection with this case (Kim Sen and Meas Minear) have been released and all charges against them dropped.

## B. Panama/United States of America

### 1. The facts

72. Concern has been expressed about the withdrawal of the United States armed forces from the Panama Canal. The concern is based on the fact that the United States army is not clearing the zone of military waste such as mines, toxic gas and arms (residues) which could cause health problems for the local population. According to the source, research has confirmed that some 7,000 of the 17,000 hectares occupied by the military have been identified as high-risk areas. Until now, the United States authorities have shown reluctance to clean up the contaminated sites, as stipulated in the 1977 treaties, claiming that no appropriate method exists to do so. Furthermore, it has been reported that live munitions on the shores of the Canal have caused the death of 12 people in the last 18 years.

### 2. Reply by the Government of the United States of America

73. The attention of the Government of the United States has been drawn to certain allegations received by the Special Rapporteur whereby the United States is not clearing the Panama Canal Zone of military waste (such as mines, toxic gas and arms residues), which could cause health problems for the Panamanian population. According to other allegations, the United States has shown reluctance to clean up the contaminated sites, as stipulated in the 1977 Panama Canal Treaty, claiming that no appropriate method exists for doing so. The two types of contaminants are reportedly toxic waste and unexploded ordinance.

Toxic Waste

74. The information below is taken from United States Government records of all instances of toxic waste use in the Panama Canal Zone. A 1977 Department of Defense study found that the only chemical-related munitions fired on the ranges in the Canal Zone contained smoke-producing agents, such as tear gas. These chemicals degrade quickly and do not pose a significant threat to the environment. In 1965, tear gas grenades, containing a chemical that is not harmful to the environment, were tested in the Canal Zone. Additionally, since 1980, United States military personnel in the Canal Zone have been trained in gas mask use by being exposed to chemicals that simulate chemical agents. These agents are also not harmful to the environment since Department of Defense policy requires the use of non-toxic chemical stimulants in these cases.

75. From 29 September 1993 until 28 December 1993, 70 projectiles containing depleted uranium were brought to Panama to test for environmental exposure to the humid tropical climate. These projectiles were then returned to the United States and later fired at the Aberdeen Proving Ground, Maryland, in 1994. There were no radiation leaks during the testing period and the depleted uranium contained in the projectiles was never directly exposed to the environment.

76. The United States Military has not abandoned any mines, chemical or biological weapons in the former Canal Zone. Further, the Panama Canal Commission, which was given use rights over much of this area in connection with its treaty responsibility to manage, operate and maintain the Canal for the United States, has not received any formal complaints of toxic waste in or around the Canal Zone. Information was received over a year ago regarding the possibility of PCB contaminated soil in the Canal Zone but the results of the investigation were negative. As shown above, the use of any toxic contaminant in the Canal Zone has been minimal with no harmful effects to either local populations or to the environment.

Unexploded Ordnance

77. Therefore, it appears that the main issue here is one of unexploded ordnance rather than toxic waste. The Panama Canal Treaty of 1977 provides the reference point for the United States' legal obligations in Panama. Article VI of the Treaty states that "the United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama". Furthermore, article IV of the agreement in implementation of article IV of the Panama Canal Treaty goes on to state that "at the termination of any activities or operations under the agreement, the United States shall be obligated to take all measures to ensure insofar as may be practicable that every hazard to human life, health and safety is removed from any defense site or military area of coordination or any portion thereof ...".

78. In considering which measures meet the Treaty's practicability standard, experts have considered several factors, including: the potential danger of the hazard to local populations; the risk that removing the hazard would harm the environment; available technology; accessibility to the ordnance given terrain constraints; and the safety of personnel conducting the removal. For example, some sections are part of the watershed area of the canal. Therefore, clearing away this area would cause erosion and increase the dredging requirements of the canal. Other sections are

irreplaceable rain forest and are home to more than 70 species of endangered and protected wildlife. Careful evaluation has revealed that further operations to clear away military material from these areas would be damaging to the environment. Additionally, clearance operations within this generally steep and inaccessible terrain would entail unacceptable risks to workers.

79. The Government of the United States has gone to great lengths to meet its obligation to perform practicable ordnance removal operations. This work began in 1996 when the United States Military began range assessments for unexploded ordnance and culminated in the transfer of three former military areas to Panama in June and July 1999. During the course of work, experts conducted a comprehensive programme of archival research to determine which range area potentially contained unexploded ordnance. The Government of the United States followed this archival research with extensive on-the-ground verification to ensure the accuracy of its findings - new data were constantly being added as technical teams evaluated the sites. United States Department of Defense policy guidance was followed in determining the appropriate actions to take for each of the range areas. This extraordinary effort, unparalleled in international experience, has virtually eliminated any risk in 98 per cent of the reverted lands. Of the 353,000 acres of land in the former Panama Canal Zone, only 2 per cent will not be available for full re-use because it would be impracticable to remove the hazards. The efforts of the Government of the United States in this regard are fully in compliance with the Panama Canal Treaty.

80. The Government of the United States has taken further steps to help ensure that the land that could not be fully cleared of ordnance does not cause safety risks to Panamanians. Upon transferring this land to Panama in June and July, the United States Military left two land management offices with sufficient equipment to allow the Panamanians to continue to maintain the security of these areas. Safety risks in these areas are also being addressed through the use of physical barriers, local education initiatives and ordnance response training for Panamanian personnel

81. Consultations with Panama over the reversion of the ranges in the former Panama Canal Zone have been ongoing since 1995. The United States Department of Defense regularly consults with the Government of Panama on environmental matters in the Canal area through the Environment Subcommittee of the Joint Committee for Treaty Implementation which was established by the Panama Canal Treaty. The United States Military has also provided relevant historical and technical documents to the Government of Panama and hosted several symposia. Additionally, the United States Military sponsored a visit to the United States by Panamanian officials, members of the media and non-governmental advocacy groups that dealt with various topics related to the ranges. Studies performed by the United States Department of Defense on the removal of unexploded ordnance in Panama have been furnished to the Government of Panama and Panamanian observers have accompanied United States teams as they performed range clearance operations. During these operations, over 112 tons of ordnance related scrap was removed. The Government of the United States has also established a working group made up of several government agencies to evaluate what environmental expertise and advice we can offer to Panama after the transfer of the Canal Zone. The Government of the United States will continue to assist Panama in environmental matters consistent with the terms of the Panama Canal Treaty.

82. The communication by the Government of the United States came with a video cassette showing the clearance of firing ranges by the American army.

3. Reply by the Government of Panama

83. The Government of Panama submitted the information below contained in communiqués by the National Authority for the Convention on Chemical Weapons (Ministry of Health) and the National Police Force.

(a) According to the Ministry of Health, when the Authority for the Interoceanic Region (ARI) started clearance of the Emperador firing range, its staff came across exploded ordnance which, by its physical characteristics, appeared to belong to G series chemical ordnance (soman, tabun and sarin);

(b) The report drawn up by the national police refers to the inspection carried out on 12 August 1999 by Panamanian observers in the area of Camp Rousseau (in the Bayonet Camp training ground), where they found M-2 type anti-personnel mines. Those ordnance residues were identified during the clearance of the firing ranges and bombing areas used by the United States armed forces on the banks of the Panama Canal, which have to be cleared under the terms of the 1977 Panama Canal Treaty.

84. Panama is also concerned by the article published in the daily Dallas Morning News on 21 August 1999, according to which the United States transported hundreds of barrels of toxic "agent orange" to Panama during the Viet Nam war; they allegedly subsequently sprayed the Panamanian forest with the agent to test its effect in a tropical site similar to the battlegrounds of south-east Asia. The United States authorities concerned have always denied the use of chemical weapons and anti-personnel mines in Panama and have stated that there is no proof that they ever tested "agent orange" on Panamanian territory.

85. A report on "The clearance of military bases and other areas used by the United States in the Republic of Panama" was annexed to the communication by the Panamanian Government. It mentioned differences between the two countries, particularly regarding the United States' responsibility for the full clean-up of about 15,000 hectares used for military purposes and on the quality of the clean-up already completed. The latter was said to be superficial and limited to areas of easy access. Exploding munitions, however, have already killed 21 persons and injured dozens of others. Instead of implementing a proper clean-up plan, which would include consideration of hazards to human life and health and environmental impact, the United States merely implemented a transfer of military areas, including superficial clearance and declining any responsibility once the areas had been returned to Panama. The Panamanian Government considers that the United States of America have not respected the terms of the treaty of 7 September 1977 concerning the return of the Panama Canal.

86. The above-mentioned report states in particular that the Republic of Panama considers that the United States is under an obligation to take all necessary steps to ensure, as far as possible, that every hazard to human life, health and safety is removed from the firing ranges. This obliges the United States to consider all existing and developing technology for the clean-up process, in consultation with the Government of Panama [...] Panama's position is

that all measures should have been taken sufficiently early to remove all hazards by the time the authorization for the use of the firing ranges expired. The field observations of our technicians have confirmed that time has been a limiting factor as far as thoroughness of execution is concerned. Panama considers, however, that if for any reason the clean-up cannot be completed before the Treaty expires, it is up to the United States to show that they made every possible effort, and that the United States are not relieved of liability for clearance operations.

87. The Panamanian Government also points out that there was never any real consultation by the United States nor effective participation by Panama in the planning, programming and implementation of works required for the collection of scientific data needed for clean-up operations.

### 4. Comments by the Special Rapporteur

88. The information received from various government and non-governmental sources tends to corroborate the allegations that ordnance residues are still present over an extensive area of Panamanian territory. That area is also contaminated by toxic waste, which constitutes a real hazard to human life and health. The Special Rapporteur therefore proposes to continue monitoring the efforts made to deal with the problem. She invites the Governments of the United States of America and Panama to continue their dialogue with a view to finding the best ways of settling the issue.

## C. Paraguay/Delta Pine

### 1. The facts

89. According to sources, the state of health of a community in Rincón i, district of Ybycui, department of Paraguari, situated 120 km from Asunción, is causing widespread concern owing to the dumping of cotton seed contaminated with toxic products. The neighbourhood has reacted by protesting and calling for the removal of the consignment back to where it came from. The seed was introduced in Paraguay by the company Delta Pine.

### 2. Reply by the Government of Paraguay

90. The full report of the Environmental Protection Directorate (SENASA) is given below:

Background

Following complaints by inhabitants of Santa Angela and Rincón i, district of Ybycui, and complaints by journalists concerning the dumping of toxic waste in those localities, the Ministry of Public Health and Social Welfare, through the Environmental Protection Directorate (SENASA), commissioned technicians to report on the situation in the two localities.

On 8 January 1999, the Environmental Protection Directorate technicians carried out a visual inspection of the places where the cotton seed had been dumped and found serious faults in the handling and final disposal of the seed. Some seed samples were also collected for subsequent analysis in the Directorate's Department of Environmental Quality.

The technicians suggested issuing an order to:

1. Suspend the disposal of seed waste;

2. Submit a technical file setting out plans for restoration of the premises and for a place for end disposal;

3. Remove the waste material currently stored in the premises.

On 19 January 1999, SENASA notified Delta Pine Paraguay Inc of the faults observed in the course of the recent inspection.

In February 1999, technicians of the Environmental Protection Directorate and JICA experts jointly proceeded to inspect the premises in question in order to observe the state of decomposition. On 26 April 1999, technicians of the Directorate and the consultant of the Pan-American Health Organization jointly proceeded to evaluate the environmental situation of the affected area.

In April 1999, samples were taken of seeds and well water in the affected area for subsequent analysis at the Environmental Quality Laboratory (qualitative analysis by gas chromatography and mass spectrometry). An analysis was also made of the samples taken in January. A copy of the results was transmitted to the General Directorate.

The analysis showed traces of three of the products used to treat the seeds: baytan, ridomil and chlorpyrifos. According to the results of the analysis, the seeds still retain a certain quantity of these pesticides. The extraction method used did not show up any presence of pesticides in the water, although that is no guarantee that the products were totally absent. The test has to be repeated after a certain interval.

Conclusion and recommendations

The above findings will be used to initiate an administrative inquiry. We again recommend the emergency measures referred to in the order requested previously and we urge Delta Pine to comply with the order as follows:

1. To cease the open-air disposal of waste (seeds and by-products derived from their decomposition);

2. To submit a technical file [...] with plans for restoring the present premises and indicating a possible place for final disposal.

3. To transfer the waste material currently stored in the premises to a safe place, which fulfils the requirements laid down by international standards for this type of product.

We also request the installation of a protective enclosure with danger warnings, in order to isolate the premises, since the presence of animals and persons has been

observed in the building concerned. As an urgent preventive measure, it is recommended that the local school Liceo Federico Becker, situated 170 metres away, should refrain from using the well water in its present and future premises and that the school's water supply should be provided by Delta Pine in conformity with required health standards.

It is also recommended that the Ministry of Health should coordinate requests for international assistance aimed at arriving at a final solution considering all the hazards involved, on the basis of a study covering the following aspects: hydrology, dispersal of substances, water testing and permanent monitoring of the affected area.

It is also requested that health checks be made on the local inhabitants at the expense of Delta Pine.

## IV. FOLLOW-UP TO MISSIONS IN THE FIELD

### A. South Africa

91. In her report on her mission to Africa in 1995, the Special Rapporteur informed the Commission about a case of illegal mercury-recycling operations, which the company Thor Chemicals was performing at its plant in Cato Ridge, KwaZulu-Natal. Exploiting loopholes in the South African legislation, Thor reportedly imported and stockpiled more than 3,000 tons of toxic waste which it could not handle (E/CN.4/1998/10/Add.2, para. 18). In this connection, the Government of South Africa reported that the commission which was appointed to investigate the case, the Thor Chemical Commission, is still working on its second phase with the instruction "to investigate the regulation and enforcement relating to the monitoring and control of mercury processing and to recommend steps which could contribute to the minimization of risk and to the protection of workers and environment". At this stage it is not clear when this work will be completed. The Department of Environmental Affairs and Tourism has constituted a multi-stakeholder Steering Committee to attend to the implementation of the recommendations of the first phase report. It is estimated that the programme of implementation could take another two years.

92. Concerning the Commission of Inquiry into the import of cupric arsenite containing waste (E/CN.4/1998/10/Add.2, para. 14), the Government of South Africa indicated that the chairperson, Mr. Venter, has completed his report, which has been submitted to the State President. At this stage, the report is not yet available, but once approval for release has been received from the Office of the State President, a copy will be forwarded to the Office of the High Commissioner for Human Rights.

### B. Brazil

93. The Government of Brazil took note of the points raised by the Special Rapporteur and made the following comments related to certain specific aspects of her report (E/CN.4/1999/46/Add.1).

94. Paragraph 43: the National Environmental Council (CONAMA) is an autonomous institution of the National Environmental System (SISNAMA) and has both consultant and deliberative natures; it is chaired by the Minister for the Environment.

95. Paragraph 46: it is stated that laboratories in Brazilian ports determine the nature of the products entering the country. It should be pointed out that the procedure used by customs officers is the random control of containers - believed to be the most adequate method of work nowadays - due to the huge amount of goods imported. The ongoing modernization of Brazilian ports will lead to the improvement of the present method.

96. Paragraph 47: implementation of legislation. It might be pointed out that although there are neither judges nor courts specialized in ecological offences, the need for such specialization in the judiciary is now under discussion. Brazilian legislation created the "environmental curatorships", which function under the guidance of the Public Prosecution Service. Paragraph 47 mentions a certain degree of conflict concerning the hierarchy and the applicability of resolutions of the National Environmental Council (CONAMA). It should be said that, notwithstanding the fact that in the Brazilian legal and juridical system there are different types of Acts with specific scope and enforcement characteristics, a law and a CONAMA resolution have clear differences concerning their hierarchy, applicability, enforcement level and scope. CONAMA's resolutions derive from Law No. 6.938/81 establishing the national police for the environment, and are not as comprehensive in their scope as that law, but they have a legal compulsory nature and their ruling must be enforced and respected.

97. Paragraphs 48 and 49: illegal entry of two shipments of goods with dangerous wastes. The Brazilian Government would like to reiterate to the Special Rapporteur that the products mentioned were retained in the coastal port of Santos and were not allowed to enter the country. Government authorities have been in contact with the Secretariat of the Basel Convention and with government officials of the two exporting countries mentioned in order to make possible the return of those products to the countries of origin. Another possible solution envisaged will be to charge both exporting countries with the costs originating from that illegal operation, inter alia, stocking, transport and judicial costs.

98. Paragraph 96: concerning the references made to negotiations within MERCOSUR related to toxic agricultural products, and to a supposed preference by some countries of the region for a "levelling down of standards" applicable to imports of chemical agricultural products in order to "protect their economic interests", it is necessary to point out that such an aspiration is not present in the negotiations going on in Sub-group No. 8 - agriculture policy - of MERCOSUR. The negotiations are concentrated on the simplification of procedures for registering products and not on technical issues to control imports. Brazil considers it normal and acceptable that the process of harmonization within a customs union area be concentrated on the necessity to avoid that these procedures be used as a non-tariff restriction to trade among MERCOSUR countries.

99. Still referring to MERCOSUR, the Government of Brazil considers it very useful to mention the following points:

(a) The Additional Protocol to the Treaty of Asunción on Environment Issues, in the final stage of negotiation, will have provisions on dangerous waste and products (chaps. XXI and XXII), and other relevant subjects such as the application of the Basel Convention,

(b) Since 1994, member countries have an agreement applied to the transport of dangerous products, addressing the harmonization of risk assessment methodology, the procedures to inform about incidents and classification and labelling of such products;

(c) The differences which might exist in the environmental legislation and practice of each MERCOSUR country are understandable as a natural consequence of the different levels of development.

100. Paragraph 97: it is said that Brazil does not have environmentally suitable incinerators for the destruction of polychlorinated biphenyls (PCB); in fact, there are three incinerators licensed by the competent environment authority. The authorities are now assessing the stockpile of PCB in the country in order to evaluate the necessity of licensing more incinerator units; they are also considering a system of partnership with private sectors in that area.

101. Paragraph 98: effect of residues of toxic agricultural products on watercourses. The Government of Brazil wishes to inform the Special Rapporteur that this question may be the object of future comments.

102. Paragraph 106: compensation of victims of ecological crimes. The Brazilian Government finds it necessary to clarify that the question raised by the Special Rapporteur is part of the provisions of the Brazilian Civil Code applicable not only to liability and compensation in general, but also to environmental crimes. At the international level, Brazil has been actively participating in the negotiations regarding the Protocol to the Basel Convention on the responsibilities and compensation for damages caused by transnational movement and stockpile of dangerous waste.

103. The Special Rapporteur has taken note of all the Brazilian Government's comments. She would like to add that she always welcomes any constructive comments which the Governments of countries visited would like to make on the reports of her field missions.

## C. Costa Rica

104. In her report on her mission to Latin America, the Special Rapporteur considered the remedies available in Costa Rica in the event of environmental damage (E/CN.4/1999/46/Add.1, para. 51). It was noted in the report that complaints in the event of damage to the environment could be lodged with the civil courts for acts by private individuals or firms and with the Constitutional Court when the State is implicated. In its comments transmitted to the Special Rapporteur, the Costa Rican Government considered the more important features of the constitutional remedies of habeas corpus and amparo available in Costa Rica. It pointed out that under the Costa Rican legal system, administrative proceedings and, where appropriate, constitutional proceedings may also be initiated against the State. The Constitutional Jurisdiction Act allows a remedy of amparo against private individuals where these are acting or have to act in the performance of public duties or are placed, de jure or de facto, in a position of authority, against which common legal remedies are clearly inadequate or too slow to guarantee rights or freedoms. A very detailed document concerning constitutional remedies available under article 48 of the Constitution, in the event of environmental damage, is available for consultation at the Office of the High Commissioner for Human Rights.

105. In the case of the 11,000 workers sterilized as a result of the intensive use of dibromonochloropropane (DBCP) on the banana plantations of the American United Fruit Company and Standard Fruit Company, between 1967 and 1979 (E/CN.4/1999/46/Add.1, paras. 56-62), the Defensoría de los Habitantes de Costa Rica (Ombudsman) again informed the Special Rapporteur that neither the companies involved nor the Costa Rican Government have yet paid any compensation to the victims or their families, despite the fact that their liability has been legally proved. The Ombudsman also points out that the request for assistance to the World Health Organization for an epidemiological study into the effects of DBCP on the female population of the banana plantations had met with no response, although the study was necessary to obtain compensation for thousands of the workers' companions, spouses and daughters.

106. The Special Rapporteur once again wishes to draw the urgent attention of the Commission on Human Rights to this case in the hope that the Costa Rican Ombudsman's request for compensation for the victims will meet with a suitable response and that proceedings will continue against the United Fruit Company and Standard Fruit to ensure that they assume their liabilities. WHO for its part should provide technical assistance in order to produce chemical data concerning the state of health of women who have been in contact with DBCP. The Special Rapporteur is awaiting developments on this case.

## D. Paraguay

107. The Paraguayan Government transmitted a communication to the Special Rapporteur recalling that, in 1997, it had drawn the international community's attention to the discovery, in the Port of Asunción, of 1,118 barrels of dangerous or toxic wastes which had entered Paraguayan territory illegally and had been stored there since 1992. In January 1998, Paraguay had requested the assistance of the Secretariat of the Basel Convention, which sent a team of French experts to Paraguay. In May 1998, the latter took samples of the barrels for subsequent analysis. A total of 1,036 barrels were counted on that occasion. The samples were analysed in French laboratories and an analysis report was sent to Paraguay.

108. In its communication, the Government also recalls the Special Rapporteur's mission to Paraguay (14-19 June 1998) and the recommendations she put forward in her report of 11 January 1999 (E/CN.4/1999/46/Add.1, para. 125).

109. Following up those recommendations, the new administration of the Paraguayan Ministry of Foreign Affairs reactivated the National Executive Committee on the implementation of the Basel Convention, initially set up by Decree No. 20261 of 16 March 1998. Official notes were sent to member institutions of the committee asking them to appoint new representatives, and the committee met on 3, 12, 17 and 27 August 1999 to consider the situation. Its members also contacted the judge and the prosecutor in charge of the case in order to expedite the procedure.

110. The case is currently with the courts. The corresponding case file, entitled "Examination of charges for breaches of legislation on the protection of the environment (toxic waste)", is being investigated by the Criminal Court of First Instance of the Octavo Turno. The investigation concerns the content of the barrels, the identity of those responsible and the

enforcement of penalties once the court has issued its ruling. The judge on the case indicated that he needed the assistance of a certified chemist to help him with the technical aspects of the documents contained in the file.

111. At its last meeting, the committee, pointing out that its members represented institutions possessing the necessary competence, offered to assist the judge with the interpretation of the technical report. The committee also requested assistance to study the file and forwarded the offer to destroy the content of the barrels made by the Netherlands.

112. In August 1999, the committee was awaiting the judge's response to its request for a ruling in the case within the time limits prescribed by the Code of Criminal Procedure, in order to allow the implementation of the proposed solutions.

113. The 1,036 barrels, not counting those sent to the National Institute for Technology and Standardization (INTN) under the judge's ruling, as indicated in the report by the French experts, are currently stored in hangar G of the Port of Asunción, in the state the French experts left them in May 1998, that is, separated into categories of products (acids, alkalis, sundry chemical products) according to the experts' analysis. Inside the hangar, the barrels are surrounded by a protective wall some 80 cm high, which was built in January 1998 following an expert's visit, to avoid any risk of contamination of the Paraguay river which might result from flooding. It may be noted that all risk of contamination has not been eliminated, since an accident, a collapse, a fire or an act of sabotage could occur at any time.

114. The following measures were considered by the committee and subsequently submitted for the attention of the judge in charge of the case:

(a) The barrels should be transferred to a new site away from inhabited areas in order to ensure safe storage;

(b) The content should be eliminated in a waste-water treatment station (only those barrels indicated in the report of the team of French experts);

(c) Some barrels should be transferred to a processing plant, designated as mineral or organic products for industrial use (only barrels indicated in the report of the French experts);

(d) The signatory countries of the Basel Convention are to be asked for assistance to destroy the barrels under suitable conditions, since Paraguay does not have the necessary facilities. The Netherlands Government has already made an offer in that respect.

The committee undertakes to continue cooperating with the judge in order to help him reach a favourable decision which will settle the matter once and for all. It will submit a further interim report on the case within three months.

115. The Special Rapporteur draws attention to the recommendations she made after her visit in June 1998 and which are given in paragraph 125 of report E/CN.4/1999/46/Add.1. She reiterates her appeal for appropriate international assistance.

## IV. CONCLUSIONS AND RECOMMENDATIONS

116. The Special Rapporteur wishes to draw the attention of the Commission on Human Rights to the conclusions and recommendations expressed in her previous reports, especially those in her report E/CN.4/1998/10 (paras. 53-106) and its addendum 2 containing the recommendations arising from her visit to Africa (paras. 54-63), and in the report E/CN.4/1999/46 (paras. 94-110) and its addendum 1 relating to her mission to Latin America (paras. 107-125). The present report should be seen in the light of those conclusions and recommendations, which remain valid. She also draws the Commission's attention to the conclusions and recommendations appearing in the addendum to this report, which arose from her visit to Germany and the Netherlands (E/CN.4/2000/50/Add.1).

117. The Special Rapporteur further draws the Commission's attention to the absence of any tangible results regarding a solution to proven cases of illicit transfer of toxic products and regarding compensation for the victims and their families.

118. It emerges from the analysis of communications received by the Special Rapporteur in recent years that the most alarming cases are related to the intensive and uncontrolled use of chemical substances, toxic agricultural products and persistent organic pollutants. The Special Rapporteur hopes that the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade will enter into force as soon as possible.

119. The Special Rapporteur welcomed the adoption by the Fifth Meeting of the Conference of the Parties to the Basel Convention (December 1999) of the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal. The Special Rapporteur hopes that the Special Fund set up under the aegis of the Basel Convention to settle damage covered by the Protocol will help resolve outstanding cases and others which may arise in the future.

120. The Special Rapporteur draws the attention of the Commission on Human Rights to the problems which arise from the export of contaminated ships due for scrapping to developing countries. There is an urgent need for this problem to be addressed in all its aspects by the appropriate international bodies. The Commission on Human Rights for its part should consider the human rights aspects of the problem.

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